

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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National Casualty Company,

Plaintiff,

-against-

Runway Towing Corp. and Devon Privott,

Defendants.

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MEMORANDUM & ORDER
19-CV-05091 (DG) (CLP)

DIANE GUJARATI, United States District Judge:

On September 6, 2019, Plaintiff National Casualty Company commenced this Declaratory Judgment action against Defendants Runway Towing Corp. (“Runway Towing”) and Devon Privott (“Privott”) (collectively, “Defendants”), seeking a judgment declaring that Plaintiff has no obligation to defend or indemnify Defendants for claims asserted in an action filed in Queens County Supreme Court, *Shah v. Runway Towing Corp.*, Index No. 716126/2018 (“Shah Action”). *See generally* Complaint, ECF No. 1.

Privott was served, *see* Executed Summons, ECF No. 6, but did not appear in this action, and the Clerk of Court entered default against him on October 28, 2019, *see* Entry of Default, ECF No. 8.¹ Plaintiff and Runway Towing consented to Chief Magistrate Judge Cheryl L. Pollak’s authority to conduct all proceedings in the case, including the entry of final judgment. *See* ECF Nos. 19, 21.

¹ Runway Towing initially failed to appear in this action, and the October 28, 2019 Entry of Default also issued against Runway Towing. *See* Entry of Default, ECF No. 8. Runway Towing subsequently appeared and, by stipulation dated November 13, 2019, Plaintiff and Runway Towing stipulated, *inter alia*, to vacating the default of Runway Towing. *See* ECF No. 9. Plaintiff has since indicated that the case as against Runway Towing shall be dismissed by stipulation with prejudice. *See* Status Report, ECF No. 22.

On April 27, 2021, Plaintiff moved for default judgment against Privott pursuant to Rule 55(b)(2) of the Federal Rules of Civil Procedure. *See* Motion for Default Judgment (“Motion”), ECF No. 20; Declaration of Jonathan Schapp, ECF No. 20-1; Memorandum of Law in Support of Motion, ECF No. 20-10. On October 19, 2021, Chief Judge Pollak *sua sponte* issued a Report and Recommendation (“R&R”), recommending that I grant Plaintiff’s Motion and enter a declaratory judgment against Privott, finding that Plaintiff is not obligated to defend or indemnify Privott in the Shah Action. *See* R&R, ECF No. 23.² No objection to the R&R has been filed, and the time for doing so has passed. *See* R&R at 13.

A district court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C). To accept those portions of an R&R to which no timely objection has been made, “a district court need only satisfy itself that there is no clear error on the face of the record.” *Jarvis v. N. Am. Globex Fund, L.P.*, 823 F. Supp. 2d 161, 163 (E.D.N.Y. 2011) (quotation marks omitted). Clear error will be found only when, upon review of the entire record, the Court is left with “the definite and firm conviction that a mistake has been committed.” *United States v. Snow*, 462 F.3d 55, 72 (2d Cir. 2006) (quotation marks omitted).

I have reviewed Chief Judge Pollak’s R&R, and, having found no clear error, adopt the R&R in its entirety.

² In *sua sponte* issuing the R&R, Chief Judge Pollak noted that at least one court in this Circuit has held that a magistrate judge cannot enter default judgment against a party absent the defaulting party’s consent to the jurisdiction of the magistrate judge to enter final judgment. *See* R&R at 2 (referencing *Ideavillage Prods. Corp. v. Antiker*, No. 20-CV-04681, 2021 WL 1987382, at *2 (S.D.N.Y. May 17, 2021)).

Therefore, Plaintiff's Motion for Default Judgment is granted, and this Court enters a declaratory judgment against Privott, finding that Plaintiff is not obligated to defend or indemnify Privott in the Shah Action.

The Clerk of Court is directed to enter judgment accordingly.

Plaintiff is directed to serve a copy of this Order on Defendants by certified mail and to file proof of service no later than November 22, 2021.

SO ORDERED.

/s/ Diane Gujarati
DIANE GUJARATI
United States District Judge

Dated: November 15, 2021
Brooklyn, New York